

**Central Administrative Tribunal
Principal Bench**

MA No. 1017/2016 in
OA No. 98/2016
and
MA No. 1010/2016 in
OA No. 794/2016

Order reserved on: 23.03.2016
Order pronounced on: 07.04.2016

Hon'ble Mr. V. N. Gaur, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)

OA No. 98/2016

1. Sh. Kishor Sinh N. Barad,
Aged about 52 years,
S/o Sh. Natver Sinh H. Barad
R/o F-3, Pavitra Row House,
Adajan, Surat, Gujarat
(Working as Income Tax Officer, Surat)
2. Sh. Virender Kumar,
Aged 45 years,
S/o Late Anoop Singh,
R/o A-2/1003, Swastik Residency,
Canal Road, Vesu, Surat
(Working as Income Tax Officer, Surat)
3. Sh. Karan Chand Dhame,
Aged about 55 years,
S/o Late Man Singh,
R/o A-2/1103, Swastik Residency,
Canal Road, Vesu, Surat
(Working as Income Tax Officer, Surat)

OA No. 794/2016

1. Sh. V.K.Chaturvedi
Aged about 50 years
S/o Sh. K.K.Chaturvedi,
R/o 3, Shivranjani Society,
Satellite Road, Ahmedabad-380015.
(Working as Dy. Commissioner of Income Tax, HQ-I,
Ahmedabad)

2. Sh. B.R.Mishra,
Aged about 55 years,
S/o Sh. R.J.Mishra,
R/o 14B, Neelkanth Apartment,
Near Gurudwara, Madhu Vihar,
I.P.Extension,
Delhi-110092.
(Working as Dy. Commissioner of Income Tax, International
Taxation, Civic Centre, New Delhi)
3. Sh. S.N.Pandey
Aged about 50 years
S/o Sh. K.P.Pandey,
R/o G-12, Top floor,
Kirti Nagar, Delhi West,
Delhi-110015
(Working as Dy. Commissioner of Income Tax, Circle-19(1)
& 19(2), Delhi)
4. Sh. P.R.Mohanty,
Aged about 50 years,
S/o Sh. R.N.Mohanty,
R/o L-1202, Girnar Apartments,
IRS Officers Accommodation,
Kaushambi, Ghaziabad
[Working as Dy. Commissioner of Income Tax,
CBDT, (V&L)]

- Applicants

(By Advocate: Sh. S.K.Gupta)

Versus

Union of India through

1. Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi.
2. Chairman,
Central Board of Direct Taxes,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi.

3. Pr. Chief Commissioner of Income Tax (CCA),
AayakarBhawan,
Ashram Road,
Ahmedabad.
4. Direct General of Income Tax (HRD),
2nd Floor, ICADR Building,
6, Institutional Area,
Vasant Kunj,
New Delhi-110070.
5. Union Public Service Commission,
Through its Secretary,
Dholpur House,
Shahjahan Road,
New Delhi.

- Respondents

(By Advocate: Sh.R.N.Singh for Sh. R.V.Sinha,
Sh. Gyanender Singh and Sh.A.K.Bhera)

ORDER in MAs No.1017/2016 & 1010/2016

Hon'ble Shri V.N.Gaur, Member (A)

We have heard Sh. S.K.Gupta, learned counsel for applicants, Sh. Gyanender Singh, learned counsel for respondents no.1 to 4, Sh. R.N.Singh for Sh. R.V.Sinha, learned counsel for respondent no.5 and Sh. A.K.Bhera, learned counsel for proposed intervenors in MA No.1161/2016 and MA No.1009/2016. During the arguments on interim relief as prayed in MA No.1017/2016 in OA No.98/2016 and MA No.1010/2016 in OA No.794/2016 learned counsels present requested for taking up the two MAs together as the issues involved as well as the ground for seeking interim relief were the same in both the MAs.

Therefore, we decided and disposed these MAs through this common order. The learned counsels presented their arguments taking the facts of MA 1161/2016 as the lead case.

MA No.1017/2016

2. This MA has been filed with the following prayer:

- “(i) reconsider the matter in relation to grant of ad-interim ex-parte and issue directions, directing the UPSC (respondent no.5) not to proceed further with the proposal sent by the Department of Revenue/CBTD on 11.12.2015 or alternatively, decide the OA finally as the pleadings are complete.
- (ii) may also pass any further order(s), direction(s) as be deemed just and proper to meet the ends of justice.”

2.1. Learned counsel for the applicants submitted that the Hon’ble Supreme Court in **Union of India vs. N.R.Parmar**, Civil Appeal no.7516/2005 dated 27.11.2012 had laid down the principle for fixation of *inter se* seniority between the direct recruits and promotees. The respondents were to implement that order in a time bound manner by holding review DPCs for re-fixation of *inter se* seniority of direct recruits and promotees in various grades. The applicants are Income Tax Officers (ITOs) working under Gujarat Commissionerate whose seniority was to be re-fixed in the grade of Income Tax Inspector (ITI) and ITO by the application of *N.R.Parmar*. According to the learned counsel the Gujarat Commissionerate has already finalised the

seniority list of ITOs in that Region and forwarded to respondent – CBDT. However, the respondents have issued an all India *inter se* seniority list of ITOs as on 01.09.2015 by incorporating the *inter se* seniority of ITOs as on 01.01.2009 without applying *N.R.Parmar*. Not only that, the respondents are going to hold DPC for the post of Assistant Commissioner of Income Tax (ACIT) on the basis of that seniority list and a proposal has been sent to the UPSC. It is the prayer of the applicants that respondent no.5 should be directed not to proceed with the proposed DPC for the post of ACIT without finalisation of all India seniority list of ITOs on the basis of *N.R.Parmar*. Learned counsel further referred to a decision of the Ernakulam Bench of this Tribunal directing the respondents to undertake the exercise of recasting the all India seniority list by holding Review DPC as a piecemeal exercise. The respondents have implemented the judgment of the Ernakulam Bench by order no.38/2016 issued on 08.03.2016. According to learned counsel, once the respondents have accepted this principle, the seniority list as finalised by the Gujarat Commissionerate should also be incorporated in the all India seniority list of ITOs and only then the DPC for the post of ACIT should be held. According to learned counsel for applicant, 13 Commissionerates out of 18 had already completed the *N.R. Parmar* exercise.

Therefore, it will be unfair to the officers of those Commissionerates if respondents continue with the process of promotion on the basis of unrevised list.

2.2. Learned counsel for UPSC submitted that once the respondent–CBDT has sent a proposal which has been found in order, the UPSC cannot withhold convening of DPC. It is also not the duty of the UPSC to verify the veracity of seniority list supplied by the department. The interim prayer made by the applicants is nothing but reiteration of prayer made in the OA which cannot be granted as interim relief. It was also submitted that the basic criteria of; *prima facie* case, balance of convenience and irreparable injury; to be followed while considering interim relief, as laid down in a catena of judgments, are not met in this case. If the applicants succeed in the OA, they can always be compensated at a later stage. He relied on Punjab and Haryana High Court Full Bench decision in **Sukhdev Singh Sidhu vs. State of Punjab**, 2003 (4) SLR 12.

2.3. Learned counsel for respondents no.1 to 4 raised the preliminary objection of non-joinder of parties as the seniors to the applicants in the all India seniority who will be affected if the promotions are stayed until the implementation of *N.R.Parmar*, have not been made parties.

Vehemently opposing the grant of interim relief he further submitted that there has been considerable progress in holding the review DPCs and finalising the seniority list following *N.R.Parmar*. The process would take time and it will not be in the interest of efficient functioning of the department to keep a large number of vacancies of ACIT unfilled till then. Explaining the reason for notifying *inter se* seniority list of ITOs on 01.09.2015, learned counsel submitted that from the seniority list of ITOs of 01.01.2009 there were only 394 officers left for promotion and that could not complete the size of zone of consideration in respect of SC/ST category officers which is required to be 5 times the number of vacancies. The department, therefore, issued the seniority list of ITOs without applying *N.R.Parmar* in which the officers promoted earlier in accordance with their panel years have been placed after the officers posted later on. The department had already sent a proposal to the UPSC on 11.12.2015 and therefore the respondents have not violated the direction of this Tribunal dated 13.01.2016 as alleged by the applicants. Further the applicants have not challenged the seniority list of 01.09.2015. According to the learned counsel the seniority list of ITOs of Gujarat Region was yet to be finalised as the letter dated 20.11.2015 from PCIT Gujarat to Assistant Director of Income Tax, HRD Delhi was

not the final seniority list. CBDT had reviewed that list and directed PCIT Gujarat on 24.02.2016 to hold further review DPCs. He also pointed out that as the applicants no.2 & 3 do not even come in the consideration zone, the question of an interim order staying all promotions was not relevant at all.

2.4. Re-joining learned counsel for the applicants submitted that since the seniority list dated 01.09.2015 is not in pursuance of implementation of *N.R.Parmar*, there is no necessity for applicants to challenge that order. He also submitted that even if it is assumed that applicants no.2 & 3 were not in the consideration zone, the applicant no.1 will certainly be in consideration zone. Further, if the revised seniority of applicants no.2 & 3 is taken into account they will also be in consideration zone. He also denied that the seniority list of applicants in Gujarat Region has not been finalised as the final list has been sent by PCIT, Gujarat to CBDT on 09.03.2016.

2.5. We have considered the submissions made by the learned counsels and perused the record. While considering the interim relief as prayed by the applicants, we are guided by the well established principles of *prima facie case*, *irreparable injury* and *balance of convenience*.

2.6. In the present case, the seniority of the applicants in the grade of ITI has already been finalised by the Commissionerate applying *N.R.Parmar*. The seniority in the grade of ITO was also prepared and communicated to CBDT on 20.11.2015. However, there were some observations made on that seniority list and the Gujarat Commissionerate was advised to hold further review DPCs. This exercise was completed and the revised seniority list was sent by Gujarat Commissionerate to CBDT on 09.03.2016. There is nothing on record to show that CBDT who had reviewed it in 2015 and made certain observations has taken note of compliance of its earlier directions and given its approval to the seniority list of ITOs of Gujarat Region. It is further noted that similar exercise has to be completed by all the 18 Commissionerates and only thereafter CBDT can prepare an all India seniority list of ITOs and notify the same in accordance with the procedure. Any claim of the applicants would arise only if they fall within the consideration zone in all India seniority list of ITOs prepared in the aforesaid manner. Even if the judgment of Ernakulam Bench is taken into account, the pre-condition for consideration of the applicants on the basis of “piecemeal principle” would be met when the seniority list on the basis of *N.R.Parmar* has been finalised by Gujarat Region and that has been incorporated tentatively in the all

India seniority list. As noted earlier, when the Gujarat Region's seniority list itself is not final, the applicants have no claim for seeking benefit of the order of Ernakulam Bench. We, therefore, do not find even *prima facie* case for considering the prayer for interim relief made in MA No. 1017/2016.

2.7. On the criteria of irreparable injury, the applicants have not been able to present a convincing case as, if they succeed in the OA and their juniors get promoted in the meantime, they can always be compensated by the Court at a later stage. The balance of convenience is also against the applicants as granting interim relief will delay promotions of large number of officers many of whom may not become junior to applicants following *N.R.Parmar*. It will also deprive the department of the services if a large number of ACITs to be appointed against existing vacancies, that would affect the functioning of the department. We, therefore, do not find any merit in the MA No.1017/2016 and the same is dismissed.

MA No.1010/2016

3. This MA has been filed by the applicants with the following prayer:

- “(i) issue ad-interim ex-parte stay, directing the respondents not to proceed further with any mode of promotion to the post of JCIT including the mode of ad-hoc promotion;
- “(ii) may also pass any further order(s), direction(s) as be deemed just and proper to meet the ends of justice.”

3.1. In OA No.794/2016 and present MA no reply has been filed by the respondents as yet. According to the learned counsel for applicants what distinguished this OA from OA 98/2014 was that the applicants in OA No.794/2016 were already promoted as Dy. Commissioner of Income Tax (DCIT) and now due for promotion to the post of Joint Commissioner of Income Tax (JCIT). Their seniority in the grade of ITO has also been finalised and sent to the respondent no.4 on 20.11.2015. The respondents have to integrate it in the all India seniority list and hold review DPCs to postpone the date of promotion of the applicants in the grade of ACIT and DCIT on the basis of new deemed date of promotion notified by the Gujarat Commissionerate on 05.11.2015. This exercise has to be completed before the DPC for filling up the vacancies in the grade of JCIT is convened. The applicants have, therefore, sought a direction to the respondents not to proceed further for the purpose of convening DPC to the post of JCIT relying on the judgment of Ernakulam Bench. We have also heard the learned

counsel for the respondents no.1 to 4 and learned counsel for respondent no.5.

3.2. We have considered the prayer for interim relief and found that the applicants are presently working as DCIT and their next promotional post is JCIT. By order dated 05.11.2015 the Gujarat Commissionerate has modified the date of promotion of the applicants to the post of ITO taking into account *N.R.Parmar*. This list has been forwarded to the CBDT on 20.11.2015. The revised seniority, as finalised by Gujarat Commissionerate, will be one of the inputs in finalising the all India seniority list of ITOs. Only thereafter review DPC for promotion to the grade of ACIT and DCIT can be held. It is admitted fact that all India seniority list of ITOs has not yet been finalised. The review DPCs are to be held in respect of the applicants first for the post of ACIT and then for DCIT and only thereafter they will be eligible for consideration to the post of JCIT. Even if the benefit of order of Ernakulam Bench is considered, that will be relevant first for holding review DPC for the post of ACIT after preparing tentative all India seniority list of ITOs on 'piecemeal basis'. and not to the DPC for the post of JCIT. Since each stage of holding DPCs is going to take time, the promotion to the post of JCIT cannot be put on hold depriving a large number of

eligible officers, all of whom may not necessarily be junior to the applicant. Once the exercise of holding review DPCs in the grade of ACIT and DCIT is completed, the review DPC for the post of JCIT will have to be held and the applicants can be compensated if any junior has been promoted prior to their promotion. Therefore, we do not find any justifiable reason for directing the respondents to put the DPC of ad hoc promotion to the post of JCIT on hold. MA is, therefore, rejected.

MA No.1161/2016 in OA No.98/2016 and
MA No.1009/2016 in OA No.794/2016

4. The learned counsel for the proposed intervenors in the MA No.1161/2016 in OA No.98/2016 and MA No.1009/2016 in OA No.794/2016, justified impleadment of the applicants in the two OAs arguing that they are directly affected by the prayer made by the applicants in the OA as well as the prayer for interim relief. The names of proposed intervenors who are now working as ITOs, figured in the all India seniority on Sty. Nos. 13, 14, 33, 35, 38, 46, 75, 97 and 103, while the applicants are at Sty. Nos. 228, 938 and 954. Therefore, any order passed by the Tribunal in this OA or MA in favour of the applicants would adversely affect the rights of proposed intervenors. There was no *prima facie* case even for an interim order as proposed intervenors are at much higher

seniority positions than the applicants. He further argued that a delay in implementing of *N.R.Parmar* cannot be a ground for interim relief and in this connection he relied on **Rana Randhir Singh and others vs. State of U.P. and others**, 1989 Supp (1) SCC 615 wherein the Hon'ble Supreme Court noted that non-implementation of rules by the State Government brought about a critical situation in the service and litigations had been pending for long time. The Hon'ble Apex Court further noted that "*many of the officers in the cadre rush to the court or the tribunal too often and interim orders are made effect by the court to hold up the hands of the State Government in giving effect to the Rules. Interim orders in such matters should not ordinarily be made as the position can always be rectified when judgment is rendered.*" The judgment of Ernakulam Bench would also not apply to this OA as in that case the seniority list in the rank of ITOs had already been finalised and notified, and only thereafter the applicant had claimed consideration for promotion to the post of ACIT. In the present case the seniority list of ITOs of Gujarat Region has not been finalised and notified as yet.

5. Issue notice in MA No.1161/2016 in OA No.98/2016 and MA No.1009/2016 in OA No.794/2016 filed by proposed intervenors for impleadment as private respondents. List the OA on 12.05.2016.

6. Separate copy of this order may be placed in both the OA files.

(Brahm Avtar Agrawal)
Member (J)

(V.N. Gaur)
Member (A)

April 07, 2016

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